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CONSTITUTIONAL ASSEMBLY

**CONSTITUTIONAL COMMITTEE
SUB-COMMITTEE**

INDEPENDENT INSTITUTIONS

14 August 1995

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FIRST DRAFT - 13 AUGUST 1995

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Chapter ...

INDEPENDENT INSTITUTIONS

AUDITOR GENERAL

Establishment and functions [independence and impartially]

1. (1) There shall be an Auditor General for the Republic.
- [(2) The Auditor General shall be independent.**
- (3) The Auditor General shall discharge his or her powers and functions impartially and without fear, favour or prejudice subject only to this Constitution and the law.**
- (4) Organs of state shall through legislative and other measures accord the Auditor General and his or her assignees the necessary assistance and protection to ensure the independence, impartiality, dignity and effectiveness of the Auditor General, including all such immunities and privileges as are necessary for this purpose.**
- (5) No person and no organ of state shall interfere with the Auditor General in the discharge of his or her powers and functions.]¹**

[Powers and functions]

[2.(1)](2) The Auditor General shall audit, and report on, the accounts and financial statements of all national and provincial state departments and

¹ Subsections (2) to (5) in bold brackets have been incorporated in the general provision on governing principles in section 21 below. The Panel of Experts have advised that the phrases "and his or her assignees" and "including all such immunities and privileges as are necessary for this purpose" are unnecessary. See par. 2 of the Panel's opinion.

administrations and of all local governments, and also all such other accounts and financial statements as may be required by law to be audited by the Auditor General.²

[(2))(3) The Auditor General may [in the public interest] audit, and report on, the accounts and financial statements of any institution [in control of public funds] funded from public money, as may be regulated by law.³

[(3) When the Auditor General performs an audit he or she shall have access to all information relevant to the audit and all persons in possession of such information shall be obliged to give their co-operation.]⁴

[Reports]

[3. (1) The Auditor General shall submit all reports on audits conducted by him or her -

- (a) in the case of national and provincial state departments and administrations and local governments, to the relevant level of government; and**
- (b) in the case of any other institutions, to the persons prescribed by law;**

Provided that, whenever the Auditor General deems it to be in the

² Formulation as approved by the CC.

³ The provision has been reformulated taking into account issues raised during the CC Subcommittee debate of 7 August 1995. Bold brackets denote suggested deletions. The underlined words are suggested insertions.

⁴ The Panel of Experts have advised that this subsection is covered by the principle of effectiveness, that it is unnecessary and a matter for ordinary legislation. The Subcommittee must indicate whether the subsection should be deleted.

public interest, or in special circumstances as prescribed by law, to any other level of government, institution or person.

(2) All reports of the Auditor General shall be made public.]⁵

Appointment, qualifications, tenure and dismissal

2.[4. (1) The President shall appoint as Auditor General a person -

(a) nominated by a committee of Parliament composed of one member of each party represented in Parliament and participating in the committee; and

(b) approved by Parliament by a resolution adopted, without debate, by a majority of at least two-thirds of the members present and voting.]⁶

(2) The Auditor General shall be a South African citizen who is a fit and proper person to hold such office. The Auditor General shall be appointed with due regard to his or her specialised knowledge of or experience in auditing, state finances and public administration, and shall not hold office in any political

⁵ It was agreed that a new formulation should be developed which combines elements of section 3 and the formulation in footnote 5 in the Seventh Draft. We suggest the following:

"(4) The Auditor General shall submit reports on audits to all authorities which have a material interest in the relevant audit and also to any other authorities as may be prescribed by law. All reports shall be made public."

⁶ If the parties agree to a standardised appointment procedure (see section 22) the following formulation can be considered for inclusion in section 2 above.

"(1) The Auditor General shall be appointed in accordance with the requirements set out in section 22."

party or organisation.⁷

(3) The Auditor General shall be appointed for a period of not less than five years. A person appointed for a period of less than ten years may be re-appointed to serve as the Auditor General for a further period, provided that his or her total period of service as the Auditor General shall not exceed ten years.⁸

[(4) The remuneration and other conditions of service of the Auditor General shall be as prescribed by an Act of Parliament, and shall not be altered to his or her detriment during his or her term of office.]⁹

[(5) The Auditor General may be removed from office only on the grounds of misbehaviour, incapacity or incompetence upon -

- (a) a finding to that effect by a committee of Parliament composed of one member of each party represented in Parliament and participating in the committee; and
- (b) the adoption by Parliament of a resolution supported by at least two-thirds of the members present and voting calling for his or her removal from office.

⁷ Subsection (2) reformulated as per instruction of the CC Subcommittee. The wording follows section 191(3) and (8) of the Interim Constitution.

⁸ This provision is too specific to be incorporated in a uniform provision on terms of office.

⁹ A provision covering remuneration and conditions of service appears only in the Draft on the Auditor General. The question is whether there should be a uniform provision in this regard.

(6) The President may suspend the Auditor General from office when his or her removal from office is under consideration by Parliament, and shall forthwith dismiss him or her from office upon adoption of the said resolution.]¹⁰

[Assignment of powers and functions and provision of funds

5. (1) The Auditor General may assign any of his or her powers or functions to such persons and subject to such conditions as may be prescribed by law.

(2) Expenditure incurred during the exercise and performance of the powers and functions of the Auditor General shall be paid from money which shall be set aside by Parliament for such purpose and from fees raised or money obtained in a manner authorised by law.]¹¹

FINANCIAL AND FISCAL COMMISSION

3 - 8¹²

¹⁰ This clause has now been incorporated in the standardised dismissal procedure in section 23. The following provision can be considered for inclusion in section 2 above:

"(4) The Auditor General may be removed from office in accordance with the procedure set out in section 23."

¹¹ The Panel of Experts is of the view that both the assignment of powers and the provision of funds are matters that should be dealt with by legislation. The Subcommittee must indicate whether the clause should be deleted.

¹² TC 6.2 has not yet reported on this Commission.

CENTRAL BANK

Establishment

9. The South African Reserve Bank, established and regulated by national law, shall be the central bank of the Republic.

Primary objective

10. (1) The primary objective of the South African Reserve Bank shall be to protect the value of the currency in the interest of balanced and sustainable economic growth in the Republic.

(2) The South African Reserve Bank shall, in the pursuit of its primary objective referred to in subsection (1), exercise its powers and functions independently and without fear, favour or prejudice, subject only to a national law: Provided that there shall be regular consultation between the South African Reserve Bank and the Minister responsible for national financial matters.¹³

Powers and functions

11. The powers and functions of the South African Reserve Bank shall be those customarily exercised and performed by central banks. Such powers and functions shall be determined by a national law: [Provided that such law shall not derogate from the primary independence and objective of the South African

¹³ This clause would need revisiting if the Subcommittee is of the view that the uniform provision on general principles (section 21) should also apply to the Reserve Bank. See footnote 32.

Reserve Bank as provided for in section 10.]¹⁴

PUBLIC ADMINISTRATION COMMISSION

Establishment and functions

12. (1) There shall be a single Public Administration Commission for the Republic as prescribed by national law. Each of the provinces shall be entitled to nominate a representative for appointment to the Commission.

[(2) The Public Administration Commission shall be independent and impartial.]¹⁵

(3) The functions of the Public Administration Commission shall be to promote the basic values and principles governing public administration set out in Chapter ...,¹⁶ as prescribed by national law.

(4) The Public Administration shall be accountable to Parliament for its activities.

(5) Provincial representatives in the Public Administration

¹⁴ The law advisers have at a previous occasion and at the request of the CC expressed an opinion that the words in bold brackets serve no purpose and are in fact superfluous. In terms of the supremacy provision already agreed to in the CC, Parliament will not have the power to make laws derogating from the principles laid down in the Constitution. The Subcommittee should consider whether these words should be retained despite the legal opinion.

¹⁵ If the Subcommittee agrees that the uniform provision on general principles (section 21) should also apply to the P A Commission, the words in bold brackets should be deleted.

¹⁶ The provisions of the Draft on the P A Commission dealing with principles governing public administration and the public service have an effect and application beyond the scope of the Commission. It would therefore be inappropriate to include these provisions in this Chapter under the heading "Independent Institutions". It is suggested that these other provisions be included in a separate chapter under "Public Administration" to precede the chapter on the Security Services.

Commission shall be competent to exercise and perform the powers and functions of the Commission with regard to provinces as prescribed by national law.

ELECTORAL COMMISSION

Establishment and functions

13. (1) There shall be an Electoral Commission which shall be **[independent, impartial and]**¹⁷ accountable to Parliament.

(2) The Electoral Commission shall be responsible for the management of free and fair elections conducted at national, provincial and local levels of government.

Appointment of members

14. The Electoral Commission shall be composed of a minimum of three persons **[who must be nominated by a representative Parliamentary Committee on Elections, approved by a seventy-five per cent majority of members of Parliament and appointed by the President.]**¹⁸

¹⁷ The application of the uniform provision on governing principles (section 21) to the Electoral Commission may require the deletion of the words in bold brackets.

¹⁸ If the parties agree to a standardised appointment procedure the words in bold brackets can be replaced by the following:

"... who shall be appointed in accordance with the requirements set out in section 22."

PUBLIC PROTECTOR

Establishment and functions

15. (1) There shall be a Public Protector for the Republic.

[(2) The Public Protector shall be independent, impartial and subject only to the Constitution and the law. The Public Protector shall discharge his or her powers and functions without fear, favour or prejudice.

(3) Organs of state shall through legislative and other measures accord the Public Protector the necessary assistance and protection to ensure his or her independence, dignity and effectiveness.

(4) No person and no organ of state shall interfere with the Public Protector in the discharge of his or her powers and functions.]¹⁹

(2) The Public Protector shall have power, as regulated by law, to investigate and report on any conduct in the affairs of the State or public administration at any level of government which is alleged or suspected to be improper or to result in any impropriety or prejudice, and to take such remedial action as is appropriate in the circumstances. In addition, the Public Protector shall have such other powers and functions as may be prescribed by law.²⁰

[(5)](3) The Public Protector shall be accessible to all persons and communities.

¹⁹ Subsections (2) to (4) in bold brackets have been incorporated in the uniform provision on governing principles in section 21.

²⁰ The CC Subcommittee agreed to this formulation at its previous meeting. Establishment and functions can be combined in one section if section 15(2) to (4) is moved to section 21.

(4) The Public Protector shall not have the power to investigate the performance of judicial functions by the courts of the Republic.²¹

[(3)](5) Reports issued by the Public Protector in connection with the discharge of his or her powers and functions shall [in principle] except in exceptional circumstances be open to the public.²²

[(4)](6) The Public Protector shall be accountable to Parliament for his or her activities, and shall report to Parliament on such activities at least once a year.²³

Appointment, qualifications, tenure and dismissal

16. [(1) The President shall appoint a person recommended by Parliament as the Public Protector.

(2) Parliament shall only recommend a person for appointment as the Public protector -

- (a) who has been nominated by a committee of Parliament ...; and
- (b) whose nomination has been approved by Parliament by a

²¹ This clause was criticized on a number of points in the CC, viz

- that the negative nature of the provision is inappropriate;
- that its operation should be limited to judicial decisions;
- that it should be moved to the chapter on the administration of justice.

The CC decided to defer further discussion of this clause pending discussion of the Draft on the Administration of Justice.

²² We suggest that the words "in principle" be replaced by "except in exceptional circumstances". One of the parties suggested that the words "except where the administration of justice otherwise requires" be added to the clause (in lieu of "in principle").

²³ Already approved by CC.

resolution adopted by a majority of at least ... per cent of the members present and voting at a meeting.]²⁴

(3) The Public Protector shall be a South African citizen who is a fit and proper person to hold such office and who complies with any other requirements prescribed by law.²⁵

(4) The Public Protector shall be appointed for a period of seven years.²⁵

[(5) The President may remove the Public Protector from office only on the grounds of misbehaviour, incapacity or incompetence upon a finding to that effect by a committee of Parliament and the adoption by Parliament of a resolution calling for his or her removal from office.

(6) The President may suspend the Public Protector from office when his or her removal from office is under consideration.]²⁶

²⁴ Subsections (1) and (2) in bold brackets can be deleted if the Subcommittee agrees on a uniform appointment procedure. In such a case the following provision can be considered for inclusion above:

"(1) The Public Protector shall be appointed in accordance with the requirements set out in section 22".

²⁵ General provisions prescribing uniform qualifications and uniform terms of office seem to be problematic. See Comparative Analysis.

²⁶ Subsections (5) and (6) incorporated in the standardised dismissal procedure in section 23. The following provision can be considered for inclusion in the above section:

"The Public Protector may be removed from office in accordance with the procedure set out in section 23."

Provincial public protectors/Deputy Public Protectors²⁷

17. ...

HUMAN RIGHTS COMMISSION

Establishment and functions [governing principles]

18. (1) There shall be a Human Rights Commission for the Republic.

[(2) The Commission shall be independent and subject only to this Constitution and the law.

(3) The Commission shall discharge its powers and functions impartially and without fear, favour or prejudice.

(4) Organs of state shall through legislative and other measures accord the Commission the necessary assistance and protection to ensure its independence, impartiality and effectiveness.]²⁸

(2) The Human Rights Commission shall promote the development, protection and attainment of, and respect for, human rights and, generally, the development of a culture of human rights in the Republic. It shall for this purpose have the necessary powers accorded to it by law, including powers to monitor,

²⁷ Stands over for discussion on provincial competencies.

²⁸ The bracketed words should be considered for incorporation in section 21.

investigate and report on the observance of human rights, to assist in securing appropriate redress where human rights have been breached and to perform research and educative functions.²⁹

[(5)] (3) The Commission shall be accountable to Parliament for its activities, and shall report to Parliament on such activities at least once a year.

²⁹ The Subcommittee agreed on the formulation in footnote 2 in the Fourth Draft of the HRC, subject to certain reservations which have now been attended to in the above formulation.

Appointment of members

19. ...³⁰

³⁰ There is disagreement among the parties on the method of selection and appointment of commissioners. There are two views, the one supports the approach in section 115(3) of the interim Constitution. The other view calls for the creation of an independent panel to select and recommend persons to the President for appointment as commissioners. Qualifications for members of the Commission also need further debate. These are the two options:

Option 1:

"4. (1) The members of the Human Rights Commission shall be appointed by the President on recommendation by Parliament.

(2) Parliament shall only recommend a person for appointment to the Commission -

(a) who has been nominated by a committee of Parliament composed of one representative of each party represented in Parliament and willing to participate in the committee: and

(b) whose nomination has been approved by Parliament by a resolution adopted by a majority of at least 75% of the members present and voting.

(3) A member of the Commission shall be an independent and impartial person of integrity who has a personal commitment to the promotion of fundamental rights."

Option 2:

"4. (1) The members of the Human Rights Commission shall be appointed by the President on recommendation by an independent panel of human rights experts, who do not hold office in any political party or organisation.

(2) Such panel of human rights experts shall be appointed by a multi-party parliamentary committee by resolution of a majority of at least two-thirds of its members.

(3) A member of the Commission shall be an independent and impartial person of integrity who has a personal commitment to the promotion of fundamental rights."

The Subcommittee must consider whether members of the Commission should be appointed in terms of the standard procedure clause, in which case the above can be replaced by the following:

"A member of the Human Rights Commission shall be appointed in accordance with the requirements set out in section 22."

GENDER COMMISSION

20. ...³¹

GENERAL PROVISIONS

Governing principles³²

21. (1) The institutions provided for in this Chapter shall be independent, impartial and subject only to the Constitution and the law. They shall discharge their powers and functions without fear, favour or prejudice.

(2) Organs of state shall through legislative and other measures accord the said institutions the necessary assistance and protection to ensure their independence, impartiality, dignity and effectiveness.

(3) No person and no organ of state shall interfere with the said institutions in the discharge of their powers and functions.

³¹ TC 6.3 must still report.

³² See Comparative Analysis for the various formulations under the headings "Independence and Impartiality", "Assistance of organs of state", "Principle of Non-interference" and "Discharge of Functions". The question before the Subcommittee is whether a uniform formulation such as suggested above could be applied to all the independent institutions established in terms of this Chapter, i.e.

Auditor General
Financial and Fiscal Commission (no report yet)
Reserve Bank
Public Administration Commission
Electoral Commission
Public Protector
Human Rights Commission
Gender Commission (no report yet).

Appointments³³

22. (1) Where the Constitution requires an appointment to be made in accordance with this section, such appointment shall be made by the President acting on the recommendation of Parliament.

- (2) The person recommended by Parliament shall be a person -
 - (a) nominated by a committee of Parliament ...; and
 - (b) approved by Parliament by a resolution adopted by a majority of at least ... % of the members present and voting.

³³ See Comparative Analysis.

As appointment procedures are in contention, the above formulation has been included just for the sake of form and to indicate that it will only apply where there is another provision requiring some or other appointment to be made in terms of the standard procedure. This would mean that the appointment of members of the Reserve Bank board, the Public Administration Commission, etc, will not be affected by this clause as these persons will be appointed in terms of legislation (as political agreements presently stand).

The appointment of the Auditor General, Public Protector and members of the Electoral Commission and the Human Rights Commission in terms of a uniform procedure would seem to be feasible. It can also be considered for other appointments mentioned in the Comparative Analysis.

Removal from office

23.³⁴ (1) Where the Constitution provides for the removal from office of a person in accordance with this section, that person may be removed from office only on the grounds of misbehaviour, incapacity and incompetence upon -

- (a) a finding to that effect by a committee of Parliament composed of one member of each party represented in Parliament and participating in the committee; and
- (b) the adoption by Parliament of a resolution supported by at least [two-thirds] of the members present and voting calling for his or her removal from office.

(2) The President may suspend a person from office when his or her removal from office is under consideration by Parliament, and shall without delay dismiss him or her from office upon adoption of the said resolution.

³⁴ See Comparative Analysis.

The above formulation comes from the Auditor General Draft and would appear to be suitable also for the Public Protector. Its application to other office-bearers should perhaps also be considered.

CONSTITUTIONAL ASSEMBLY

GENERAL PRINCIPLES

GENERAL PRINCIPLES APPLICABLE TO THE INDEPENDENT BODIES AND THE JUDICIARY

1. INDEPENDENCE AND IMPARTIALITY

<p>PUBLIC PROTECTOR</p> <p>Seventh Draft: 6 August 1995</p>	<p>HUMAN RIGHTS COMMISSION</p> <p>Fourth Draft: 6 August 1995</p>	<p>AUDITOR GENERAL</p> <p>Seventh Draft: 6 August 1995</p>	<p>PUBLIC ADMINISTRATION COMMISSION</p> <p>Seventh Draft: 5 August 1995</p>
<p>Establishment 1(2): The Public Protector shall be independent, impartial and subject only to the Constitution and the law. The Public Protector shall discharge his or her powers and functions without fear, favour or prejudice.</p>	<p>Establishment and governing principles 1(2): The commission shall be independent and subject only to this Constitution and the law.</p>	<p>Establishment, independence and impartiality 1(2): The Auditor General shall be independent.</p>	<p>Public Administration Commission 2(2): The Public Administration Commission shall be independent and impartial</p>

CENTRAL BANK Second Draft: 5 August 1995	JUDICIARY Draft 10 August	ELECTORAL COMMISSION First Draft: 7 August 1995	GENDER COMMISSION No Draft	FINANCE AND FISCAL COMMISSION No Draft
<p>Primary Objective 2(2): The South African Reserve Bank shall, in the pursuit of its primary objective referred to in subsection (1), exercise its powers and functions independently and without fear, favour or prejudice, subject only to a national law. Provided that there shall be regular consultation between the South African Reserve bank and the Minister responsible for National financial matters.</p>	<p>Judicial Authority 1(2): The courts shall be independent and subject only to this Constitution and the law.</p>	<p>Clause 1: There shall be an Electoral Commission which must be independent, impartial and accountable to Parliament.</p>		

2. ASSISTANCE OF ORGANS OF STATE

PUBLIC PROTECTOR	HUMAN RIGHTS COMMISSION	AUDITOR GENERAL	PUBLIC ADMINISTRATION COMMISSION	CENTRAL BANK
<p>Establishment 1(3) Organs of State shall through legislative and other measures accord the Public Protector the necessary assistance and protection to ensure his or her independence, dignity and effectiveness.</p>	<p>Establishment and governing principles 1(4) Organs of State shall through legislative and other measures accord the commission the necessary assistance and protection to ensure its independence, impartiality and effectiveness.</p>	<p>Establishment, independence and impartiality 1(4) Organs of state shall through legislative and other measures accord the Auditor General [and his or her assignees] the necessary assistance and protection to ensure the independence, impartiality, dignity and effectiveness of the Auditor General, [including all such immunities and privileges as are necessary for this purpose].</p>		

JUDICIARY	ELECTORAL COMMISSION
Judicial Authority 1(6): Organs of state shall, through legislative and other measures, give the courts the necessary assistance to protect and ensure their independence, dignity and effectiveness.	

3. THE PRINCIPLE OF NON INTERFERENCE

PUBLIC PROTECTOR	HUMAN RIGHTS COMMISSION	AUDITOR GENERAL	PUBLIC ADMINISTRATION COMMISSION	CENTRAL BANK
Establishment 1(4): No person and no organ of state shall interfere with the Public Protector in the discharge of his her powers and functions.		Establishment, independence and impartiality 1(5): No person and no organ of state shall interfere with the Auditor General in the discharge of his or her powers and functions		

JUDICIARY	ELECTORAL COMMISSION	GENDER COMMISSION	FINANCIAL AND FISCAL COMMISSION
Judicial Authority 1(4): No person and no organ of state shall interfere with the courts in the performance of their functions			

4. DISCHARGE OF POWERS AND FUNCTIONS WITHOUT FEAR, FAVOUR OR PREJUDICE

PUBLIC PROTECTOR	HUMAN RIGHTS COMMISSION	AUDITOR GENERAL	PUBLIC ADMINISTRATION COMMISSION	CENTRAL BANK
<p>Establishment 1(2): The Public Protector shall be independent, impartial and subject only to the Constitution and the law. The Public Protector shall discharge his or her powers and functions without fear, favour or prejudice.</p>	<p>Establishment and governing principles 1(3): The commission shall discharge its powers and functions impartially and without fear, favour or prejudice</p>	<p>Establishment, independence and impartiality 1(3) The Auditor General shall discharge his or her powers and functions impartially and without fear, favour or prejudice subject only to this Constitution and the law</p>		

JUDICIARY	ELECTORAL COMMISSION	GENDER COMMISSION	FINANCE AND FISCAL COMMISSION
Judiciary Authority 1(3): The courts shall apply the constitution and the law impartially and without fear, favour or prejudice.			

5. ACCOUNTABILITY

PUBLIC PROTECTOR	HUMAN RIGHTS COMMISSION	AUDITOR GENERAL	PUBLIC ADMINISTRATION COMMISSION	CENTRAL BANK
Powers and Functions 2(4) The Public Protector shall be accountable to Parliament for his or her activities, and shall report to Parliament on such activities at least once a year.	Establishment and governing principles 1(5) The commission shall be accountable to Parliament for its activities, and shall report to parliament at least once a year.		Public Administration Commission 2(4): The Public Administration Commission shall be accountable to Parliament for its activities.	

JUDICIARY	ELECTORAL COMMISSION	GENDER COMMISSION	FINANCE AND FISCAL COMMISSION
	Clause 1: There shall be an Electoral Commission which must be independent, impartial and accountable to Parliament		

6. ACCESSIBILITY

PUBLIC PROTECTOR	HUMAN RIGHTS COMMISSION	AUDITOR GENERAL	PUBLIC ADMINISTRATION COMMISSION	CENTRAL BANK
Establishment 1(5) The Public Protector shall be accessible to all persons and communities				

JUDICIARY	ELECTORAL COMMISSION	ELECTORAL COMMISSION: LAW ADVISERS	GENDER COMMISSION	FINANCE AND FISCAL COMMISSION

7. PUBLIC ACCESS TO REPORTS

PUBLIC PROTECTOR	AUDITOR GENERAL
Powers and Function 2(3) Reports issued by the Public Protector in connection with the discharge of his/her powers and functions shall in principle be open to the public.	Reports 3(2) All reports of the Auditor General shall be made public.

CONSTITUTIONAL ASSEMBLY

SCHEMATIC OVERVIEW

SCHEMATIC OVERVIEW OF APPOINTMENTS PROVISIONS OF THE INDEPENDENT BODIES, THE JUDICIARY AND THE SECURITY SERVICES

	<u>PUBLIC PROTECTOR</u>	<u>AUDITOR GENERAL</u>	<u>HUMAN RIGHTS COMMISSION</u>
	Seventh Draft: 6 August 1995	Seventh Draft: 6 August 1995	Fourth draft: 6 August 1995
1. Appointed by:	3(1) The President shall appoint a person recommended by parliament as the Public Protector	[4(1) The President shall appoint as Auditor General a person -	<u>Option 1:</u> 4(1) The members of the Human Rights Commission shall be appointed by the President on recommendation by parliament. <u>Option 2:</u> 4(1) The members of the Human Rights Commission shall be appointed by the President on recommendation by an independent panel of human rights experts, who do not hold office in any political party or organisation.

	<u>PUBLIC PROTECTOR</u>	<u>AUDITOR GENERAL</u>	<u>HUMAN RIGHTS COMMISSION</u>
	Seventh Draft: 6 August 1995	Seventh Draft: 6 August 1995	Fourth draft: 6 August 1995
2. Nominated or recommended by:	3(2) Parliament shall only recommend a person for appointment as the Public Protector - (a) who has been nominated by a committee of Parliament and (b) whose nomination has been approved by Parliament by a resolution adopted by a majority of at least ... per cent of the members present and voting at a meeting.	(a) nominated by a committee of Parliament composed of one member of each party represented in Parliament and participating in the committee; and (b) approved by Parliament by a resolution adopted, without debate, by a majority of at least two-thirds of the members present and voting.]	Option 1: 4(2)Parliament shall only recommend a person for appointment to the Commission - (a) who has been nominated by a committee of Parliament composed of one representative of each party represented in Parliament and willing to participate in the committee; and (b) whose nomination has been approved by Parliament by a resolution adopted by a majority of at least 75% of the members present and voting. Option 2: 4(2) Such panel of human rights experts shall be appointed by a multi-party parliamentary committee by resolution of a majority of at least two-thirds of its members

	<u>PUBLIC PROTECTOR</u>	<u>AUDITOR GENERAL</u>	<u>HUMAN RIGHTS COMMISSION</u>
	Seventh Draft: 6 August 1995	Seventh Draft: 6 August 1995	Fourth draft: 6 August 1995
3. Qualifications and personal attributes of appointee:	3(3) The Public Protector shall be a South African citizen who is a fit and proper person to hold such office and who complies with any other requirements prescribed by law.	4(2) The Auditor General shall be a South African citizen who is a fit and proper person to hold such office, [has specialised knowledge of or experience in auditing, state finances and public administration, and does not hold office in any political party or organisation]	<u>Options 1 and 2</u> 4(3) A member of the Commission shall be an independent and impartial person of integrity who has a personal commitment to the promotion of fundamental rights.
4. Term of appointment:	3(4) The Public Protector shall be appointed for a period of <u>seven</u> years.	4(3) The AG shall be appointed for a period of not less than <u>five</u> years. A person appointed for a period of less than <u>ten</u> years may be reappointed to serve as the AG for a further period, provided that his or her total period of service as the AG shall not exceed <u>ten</u> years.	

	<u>PUBLIC PROTECTOR</u>	<u>AUDITOR GENERAL</u>	<u>HUMAN RIGHTS COMMISSION</u>
	Seventh Draft: 6 August 1995	Seventh Draft: 6 August 1995	Fourth draft: 6 August 1995
5. Dismissal, grounds for dismissal; suspension	<p>3(5) The President may remove the Public Protector from office only on the grounds of misbehaviour, incapacity or incompetence upon a finding to that effect by a committee of Parliament and the adoption by Parliament of a resolution calling for his or her removal from office.</p> <p>3(6) The President may suspend the Public Protector from office when his or her removal from office is under consideration.</p>	<p>4(5) The AG may be removed from office only on the grounds of misbehaviour, incapacity or incompetence upon -</p> <p>a) a finding to that effect by a committee of Parliament composed of one member of each party represented in Parliament and participating in the committee; and</p> <p>(b) the adoption by Parliament of a resolution supported by at least two-thirds of the members present and voting calling for his or her removal from office.</p> <p>4(6) The President may suspend the Auditor General from office when his or her removal from office is under consideration by Parliament, and shall forthwith dismiss him or her from office upon adoption of the said resolution.</p>	
6. Remuneration and other conditions of service:		Shall be as prescribed by an Act of Parliament, and shall not be altered to his or her detriment during his or her term of office.	

THE COURTS AND THE ADMINISTRATION OF JUSTICE

	JUDICIAL OFFICERS	CHIEF JUSTICE, DEPUTY CHIEF JUSTICE AND THE PRESIDENT AND DEPUTY PRESIDENT OF THE CONSTITUTIONAL COURT; OTHER JUDGES	CONSTITUTIONAL COURT JUDGES
1. Appointment by:	5(6) The appointment of other judicial officers shall be regulated by an Act of Parliament.	5(3) The Chief Justice and the President of the Constitutional Court shall be appointed by the President ... 5(5) The Deputy Chief Justice, Deputy President of the Constitutional Court, and all other judges shall be appointed by the President...	<i>ANC: interim constitution sections 99(4) and (5)(4)</i> Subject to subsection (5), six judges of the Constitutional Court shall be appointed by the President in consultation with the Cabinet and after consultation with the President of the Constitutional Court: Provided that not more than two persons may be appointed from the category of persons referred to in subsection (2)(c)(ii).

	JUDICIAL OFFICERS	CHIEF JUSTICE, DEPUTY CHIEF JUSTICE AND THE PRESIDENT AND DEPUTY PRESIDENT OF THE CONSTITUTIONAL COURT; OTHER JUDGES	CONSTITUTIONAL COURT JUDGES
2. Nominated or recommended by:		<p>... in consultation with the Cabinet and after consultation with the Judicial Service Commission.</p> <p><i>NP: The chief Justice and the President of the Constitutional Court shall be appointed by the President (in consultation with the Cabinet and) on the advice of the JSC.</i></p> <p>...on the advice of the Judicial Service Commission</p>	<p>(5) (a) Subject to subsection (6), an appointment or appointments under section 97 (2) or subsection (4) or (7) of this section shall only be made from the recommendations of the Judicial Service Commission, and with due regard to its reasons for such recommendations, of not more than three nominees in excess of the number of persons required to be appointed: Provided that in respect of the first appointment after the commencement of this Constitution of the six judges referred to in subsection (4), the Judicial Service Commission shall submit a list of ten nominees.</p> <p>(b) If the appointing authorities decide not to accept any or some of such recommendations, the Judicial Service Commission shall be informed thereof and be furnished with the reasons therefor.</p> <p>(c) After having been informed in terms of paragraph (b), the Judicial Service Commission shall, in accordance with paragraph (a), submit further recommendations, whereafter the appointing authorities shall make the appointment or appointments from the recommendations as</p>

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			<p>supplemented in terms of this paragraph.</p> <p>(d) In submitting its recommendations to the appointing authorities in terms of paragraphs (a) and (c) the Judicial Service Commission shall have regard to the need to constitute a court which is independent and competent and representative in terms of race and gender.</p> <p>Compromise position of the NP: The Deputy of the Constitutional Court and all the judges of the Constitutional Court shall be appointed by the President after advice by the Judicial Service Commission and in consultation with the leaders of all political parties represented in Parliament. In the event of no consensus having been reached by the party leaders, the judges will be appointed by a majority of more than 75 percent of the members of the National Assembly and Senate sitting together.</p>

	JUDICIAL OFFICERS	CHIEF JUSTICE, DEPUTY CHIEF JUSTICE AND THE PRESIDENT AND DEPUTY PRESIDENT OF THE CONSTITUTIONAL COURT; OTHER JUDGES	CONSTITUTIONAL COURT JUDGES
<p>3. Qualifications and personal attributes of appointee:</p>	<p>5(1) No person shall be qualified to be appointed a judicial officer or acting judicial officer unless he or she is a South African citizen and is a fit and proper person to be a judicial officer.</p> <p>5(2) A judicial officer shall, before commencing to perform the functions of his or her office, make and subscribe an oath of solemn affirmation in the terms set out in Schedule X before a judge.</p>		

	JUDICIAL OFFICERS	CHIEF JUSTICE, DEPUTY CHIEF JUSTICE AND THE PRESIDENT AND DEPUTY PRESIDENT OF THE CONSTITUTIONAL COURT; OTHER JUDGES	CONSTITUTIONAL COURT JUDGES
4. Term of appointment:			<p>5(7) Members of the Constitutional Court shall hold office for non-renewable terms not exceeding nine years.</p> <p><i>Advisors suggested compromise: ANC 10 years and NP 7 years</i></p> <p>5(8) The five oldest members of the Constitutional Court in office at the time of the expiration of the terms of office of the present judges of the Constitutional Court shall retire at such expiration and all other members after the expiration of a further period of four years.</p> <p><u>Acting Judges</u></p> <p>7(9) Acting judges shall be appointed by the Minister of Justice on the advice of the President of the Constitutional court, the Chief Justice, or the judge President of the appropriate division of the High Court or other court constituted in terms of s2(v), as the case may be. An Acting judge to the</p>

	JUDICIAL OFFICERS	CHIEF JUSTICE, DEPUTY CHIEF JUSTICE AND THE PRESIDENT AND DEPUTY PRESIDENT OF THE CONSTITUTIONAL COURT; OTHER JUDGES	CONSTITUTIONAL COURT JUDGES
5. Dismissal, grounds for dismissal and suspension:			<p>6(1) The President may remove a judge from office on grounds of incapacity, gross misconduct or gross incompetence upon a finding to that effect by the Judicial Service Commission and the adoption by Parliament in joint session and by a majority of two-thirds of members of a resolution calling for the removal of such judge from office.</p> <p>6(2) A judge who is the subject of an investigation may be suspended by the President on the advice of the Chief Justice pending the finalisation of such investigation.</p>
6. Remuneration and conditions of service:			<p>6(3) The emoluments and pension and other benefits of judges shall be prescribed by an Act of Parliament or regulations made thereunder and shall not be subject to reduction.</p>

<p style="text-align: center;">DEFENCE FORCE Third Draft: 8 August 1995</p>	<p style="text-align: center;">POLICE Third Draft: 8 August 1995</p>	<p style="text-align: center;">INTELLIGENCE Third Draft: 8 August 1995</p>
<p><u>Appointment of Chief of the Defence Force :</u></p> <p>4(1) The defence force shall be under the command of a chief of the defence force who shall be appointed by the President.</p> <p><i>The procedure for appointing the Chief of the Defence Force is in contention</i></p>	<p><u>Appointment of national commissioner:</u></p> <p>9(1) The police service shall be under the [operational] command of a national commissioner who shall be appointed by the President.</p> <p><u>Appointment of provincial commissioner:</u></p> <p>9(3) A provincial commissioner for each province shall be appointed by the national commissioner in accordance with a national law who shall be responsible for all visible policing functions in the province and such other functions as prescribed by a national law.</p>	<p><u>Appointment of head of an intelligence service:</u></p> <p>14 (2) The head of an intelligence service shall be appointed by the President [subject to parliamentary approval].</p> <p><u>Appointment of Inspectors:</u></p> <p>17 A civilian inspectorate shall monitor the activities of intelligence services and perform such other functions as prescribed by law. Inspectors shall be appointed by the President with the approval of Parliament by resolution adopted by a majority of at least two thirds of the members.</p>

